NO. 19-6609

IN THE

SUPREME COURT
OF THE UNITED STATES

CHAD STONER,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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March 17, 2020

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REPLY BRIEF

The question presented by this case is as straightforward as it is important. The court of appeals interpreted the federal interstate threat statutes, 18 U.S.C. § 875(c) and § 876(c), as permitting conviction of an individual for republishing a video of a violent incident and for discussing revolutionary ideas and scenarios in letters to an intimate partner. Petition for a Writ of Certiorari ("Pet.") 5-6. That holding could and easily would equate to governmental regulation – and prosecution – of news outlets across the Nation and individuals engaged in civic and political discourse. *Id.* No result could be more antithetical to the Framers' conception of the right to free speech, or this Court's interpretation of the First Amendment to the U.S. Constitution, including in *Elonis v. United States*, 135 S. Ct. 2001 (2015).

The government, in opposing review, asks whether the ruling of the court of appeals actually conflicts with any other decision or authority. Brief of the U.S. in Opposition ("Opp.") 7. The simple answer is that it contravenes not only *Elonis* but a host of opinions from this Court and throughout the circuits, such as *Watts v. United States*, 394 U.S. 705 (1969), and *United States v. Stewart*, 411 F.3d 825 (7th Cir. 2005), which have recognized that the federal threat statutes must be interpreted and applied so as to avoid reaching protected speech or unduly chilling the free communication of ideas. *E.g.*, 394 U.S. at 707-08; 411 F.3d 825, 828. The more nuanced response is that, if the ruling below does not directly contradict any other decision, that is only because no other case has addressed such an extraordinary

prosecution, much less held (or even suggested) that it might go forward and produce a constitutionally valid conviction.

This is an exceptional case, presenting an exceptionally important issue, with exceptionally broad impacts on fundamental liberties. Review by this Court is warranted.[1]

[1] While the government makes much of the fact that no sufficiency objection was raised in the district court (Opp. I, 5, 8), it does not and cannot dispute – in light of long-standing precedent from the circuits, supported by this Court's past opinions, *see, e.g.*, *United States v. Flyer*, 633 F.3d 911, 917 (9th Cir. 2011) (citing, *inter alia*, *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)); *United States v. Gaydos*, 108 F.3d 505, 509 (3d Cir. 1997) (citing, *inter alia*, *United States v. Olano*, 507 U.S. 725, 732 (1993)); *United States v. Bowie*, 892 F.2d 1494, 1497 (10th Cir. 1990) (citing, *inter alia*, *Jackson*, 443 U.S. at 319) – that where the issue is whether the prosecution failed to satisfy an essential element of the crime of conviction, as it is here, the standard and scope of appellate review is essentially the same as if the objection had been fully preserved, since such a failure of proof would necessarily constitute "plain error." *E.g.*, *Bowie*, 892 F.2d at 1497. The lack of objection thus presents no obstacle to this Court's consideration of the case, just as it presented no concern to the court below.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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